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DEED OF CONSERVATION EASEMENT FOR THE HIGH LINE CANAL

NOTICE: THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY, WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND (“GOCO”) HAS FOUND THAT THIS DEED OF CONSERVATION EASEMENT PROVIDES BENEFITS THAT ARE IN THE PUBLIC INTEREST.

THIS DEED OF CONSERVATION EASEMENT (the "Easement") is granted this _____ day of _____ 2024, by the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (“Denver Water”), whose address is 1600 W. 12th Ave., Denver CO, 80204, to the HIGH LINE CANAL CONSERVANCY, a Colorado non-profit corporation (the “Conservancy”), whose address is 4010 E. Orchard Rd., Centennial, CO 80121. Denver Water and the Conservancy and their successors and assigns are referred to herein as the “Parties” or individually as a “Party.”

The following Recitals are part of this Easement.

- A. Denver Water is the record owner of the property commonly known as the High Line Canal (the “Canal”) together with all property, easements, rights of way and land necessary or incidental to the use, occupancy, ownership or operation of said Canal (the “Property”), described in **Exhibit A** and excepting all property described in **Exhibit B** attached hereto and incorporated herein by reference. No water rights are part of the Property or subject to the terms of this Easement. The Parties acknowledge that the Canal may have been built in a different location than that depicted in the original design drawings and may have meandered in the years since construction.
- B. Over the last century, the Property has served several roles, including a water delivery system, a multi-purpose public recreational trail, and an urban natural ecosystem. With the encouragement of Denver Water, and the efforts of the Conservancy and twelve cities, counties, and special districts through which the Property traverses, the Property has evolved into a valued community recreational and environmental amenity while retaining its utility as a water delivery system with stormwater use. The current state of the Property is generally described in the Present Conditions Report identified in **Exhibit C** and incorporated herein by reference. The Parties understand that not all existing facilities and uses may be included in the Present Conditions Report.

- C. The Conservancy is an organization described in section 501(c)(3) of the Internal Revenue Code with a mission to preserve, protect, and enhance the Property in partnership with the public.
- D. Denver Water's intent is to convey this Easement to the Conservancy, for the purpose of ensuring that, under the Conservancy's perpetual stewardship, the Conservation Values of the Property defined below will be conserved and maintained forever, that future uses of the land that are inconsistent with the Conservation Values will be prevented, and that new uses of the land beginning after the date of this Easement that have not been reserved to Denver Water and are inconsistent with the Conservation Values are prohibited.
- E. After the execution and recording of this Easement, Denver Water plans to convey its title to the Property or different sections of the Property to one or more Counties in which all or a part of the Property is located, or to a state or federal agency that has a purpose or mission that is compatible with preservation and protection of the Conservation Values. Upon such conveyance, Denver Water's rights and obligations under this Easement, except such rights as are specifically reserved herein to Denver Water and the obligations that go with such reserved rights, terminate as to the sections of the Property so conveyed for acts or omissions occurring after such conveyances as to the sections of the Property so conveyed. Each County or agency that receives such a conveyance shall be a Party to this Easement as owner of the affected section of the Property and, whether one or more Counties or agencies, shall be referred to herein as a "Landowner" or "Landowners." For definitional purposes, so long as Denver Water retains ownership of any sections of the Property it remains a Landowner, and so long as Denver Water retains the use of the Water Works Purposes it remains a Party.
- F. It is the intent of the Parties that the stewardship of the Property will continue as a collaborative effort among Denver Water (so long as it remains a Party or a Landowner), the Conservancy, and the Landowners, subject to the terms and provisions of this Easement. The Parties and Landowners shall communicate and coordinate proposed activities, projects, and changes in use of the Property so that each of them shall be apprised at all times of any proposed activities, projects, or changes in the use of the Property that may materially alter or adversely affect the Conservation Values as defined below.
- G. Funding for the Conservancy's costs associated with the donation of this Easement has been provided in part by GOCO. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and GOCO, by adopting and administering competitive grant programs and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife

habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, Denver Water voluntarily grants and conveys to the Conservancy, subject to reserved Water Works Purposes, and the Conservancy voluntarily accepts, a perpetual conservation easement over the Property, which is an immediately vested interest in real property defined by C.R.S. § 38-30.5-101, *et seq.*, and of the nature and character described in this Easement, exclusively for the purpose of conserving and forever maintaining the Conservation Values.

1. **Property.** This Easement is subject to all existing rights in the Property whether recorded or unrecorded in the real estate records. Denver Water makes no warranty of title to the Property. Denver Water reserves for itself and successors in interest with respect to the Property the following rights.
 - a. **All water rights and interests in ground water.** No water rights including non-tributary and not-non-tributary ground water underlying the property subject to Denver Water's decree entered in Case No. 2003CW186 Water Division 1 are the subject of this Easement.
 - b. **Reserved Water Works Purposes.** The Property may be used for the benefit of Denver Water's water works purposes, as described in Article X of the Charter of the City and County of Denver, as it may be modified, amended, superseded or replaced, including but not limited to the ability to install, maintain, replace, improve, remove, operate, and grant permission for other water providers' use of any portion of below- or above-ground water works structures or improvements within the Property in Denver Water's sole and absolute discretion ("Water Works Purposes"). No other use of the Property shall impair or limit uses for Water Works Purposes without Denver Water's written permission. Denver Water shall use commercially reasonable efforts to minimize impact to the Conservation Values, including restoring the affected Property to its pre-existing condition as much as reasonable, but nothing in this Easement shall prohibit Denver Water from making improvements, alterations, or proceeding with uses for Water Works Purposes on the Property. Denver Water shall communicate with the Conservancy and Landowners about its plans to improve or alter the Property for Water Works Purposes and shall provide advance notice within a reasonable time to the Conservancy and Landowners before commencing major changes to the Property for Water Works Purposes (except for emergencies). As an example, disturbances to the Property that are reasonably expected to last for several days are considered major changes. If Denver Water abandons use and operation of any Water Works Purposes facilities on the Property,

such abandonment shall not constitute abandonment of Denver Water's rights under this Easement. Denver Water's reservation of Water Works Purposes under this Easement may only be vacated by recorded notice of intent provided to the Parties and signed by Denver Water.

2. **Purpose.** It is the purpose and intent of this Easement (“Purpose”) to:
- ensure that the Property will be perpetually maintained as a linear open space park with a multi-purpose public recreational trail and canal,
 - maintain public access and recreational use of the Property,
 - permit stormwater uses of the Property that are consistent with the preservation and protection of the other Conservation Values defined herein, and
 - preserve the environmental and urban natural ecosystem values of the Property
- (all of the foregoing are referred to herein as the “Conservation Values”),

and to protect these Conservation Values of the Property for the benefit of this and future generations, while preventing or restricting future uses of the Property that are not consistent with the preservation and protection of the Conservation Values or that will significantly impair or interfere with the preservation and protection of the Conservation Values.

3. **Use of Property.**

- a. The restrictions herein will confine the use of the Property to the Conservation Values, the Permitted Uses (defined below), and other activities approved pursuant to the terms of this Easement, and the Conservancy shall enforce these use limitations against all individuals, groups and organizations, and legal and government entities. The operation, management, and alteration of the Property shall be guided by the principles and objectives developed through the 2017-2019 collaborative regional planning process that was undertaken by the Conservancy and the 12 cities, counties, and special districts through which the Property traverses, Landowner approval, and the government land use and development regulations and requirements for the particular location within the Property.
- b. Additionally, the Conservancy and the Landowners have adopted protocols for stewardship and enforcement of the Easement (“Conservation Easement Stewardship Procedures”). Prior written approval of all Parties and Landowners is required for any amendments to the Conservation Easement Stewardship Procedures.

4. **Public Necessity, Health, and Safety.**

- a. Nothing in this Easement precludes any entity with legal rights to use the Property, including but not limited to Landowners, from taking or authorizing any action it believes in good faith is necessary to address a public necessity and/or to protect public health and safety. Such entities shall communicate with the Conservancy about their plans to alter the Property to address a public necessity and/or to protect public health and safety and shall provide advance written notice to the Conservancy within a reasonable time before commencing such changes to the Property, except for emergencies. The Conservancy shall be provided with written notice within 48 hours after commencement of emergency construction or other activities by the entity conducting such emergency construction or other activities.
- b. It is not the intent of the Parties that actions taken under paragraph 4.a. circumvent the Purpose of this Easement. Rather, the Parties recognize that situations may arise in which actions to protect public health or safety or that otherwise may be a public necessity may be required. The purpose of providing advance written notice to the Conservancy of such proposed activities is to give the Conservancy the opportunity to make suggestions to mitigate any potential material harm to the Conservation Values. Activities undertaken under paragraph 4.a. shall be consistent with protection and preservation of the Conservation Values to the extent feasible under the circumstances. Commercially reasonable efforts shall be undertaken for such activities to minimize impact to the Conservation Values, including restoring the affected Property to its pre-existing condition as much as reasonable.
- c. If a closure of the Property is expected to last for more than 48 hours, the entity responsible for the closure shall provide a temporary detour for the use of the recreational trail.

5. **Permitted Uses.** In addition to uses of the Property that are defined as Conservation Values and uses that are determined by an entity to be a public necessity or necessary for public health and safety, the Landowner may engage in or allow the following uses of the Property and reasonable activities incidental thereto, provided they are consistent with the Purpose of this Easement and they do not significantly impair or interfere with the preservation and protection of the Conservation Values (“Permitted Uses”):

- a. Special Events and Programs. Special events and programs, including, but not limited to, volunteer clean-up opportunities, fundraisers, _____;

- b. Utility Uses. Use of the Property by entities supplying a utility service to the general public including but not limited to electricity, telecommunications, water, sewer, and gas;
 - c. Maintenance of the Property. Landowners or their designees may take or authorize any action that is necessary or appropriate for maintenance of the Property.
- 6. **Present Conditions**. By its execution of this Easement, the Conservancy acknowledges that Denver Water will not be responsible for modifying, correcting, or otherwise changing any existing use or encumbrance.
- 7. **Prohibited Actions**. Any use of the Property not listed in paragraph 4 or 5 above that is inconsistent with the Purpose of this Easement or that significantly impairs or interferes with the preservation and protection of the Conservation Values is prohibited. By way of example and not limitation, the following activities and uses are explicitly prohibited:
 - a. Construction of Buildings and Structures. The construction of any building or other structure or improvement on the Property that is not permitted under paragraph 4 or 5 above is prohibited, except with the prior written approval of the Landowner and a prior written determination by the Conservancy that the use is consistent with the Purpose of this Easement and does not significantly impair or interfere with the preservation and protection of the Conservation Values. Any new facilities or structures intended for a private individual's use of the Property are prohibited.
 - b. Alteration of the Canal. Alteration of the topographical profile or cross-section of the Canal that is not permitted under paragraph 4 or 5 above is prohibited except for minor changes resulting from routine maintenance or with the prior written approval of the Landowner and Denver Water (so long as it has not vacated its Water Works Purposes) and prior written determination by the Conservancy that the use is consistent with the Purpose of this Easement and does not significantly impair or interfere with the preservation and protection of the Conservation Values.
 - c. Subdivision. Except for the conveyance of portions of the Property to the City and County of Denver, Arapahoe County, Douglas County, Adams County, or any state or federal agency that has a purpose or mission that is compatible with preservation and protection of the Conservation Values, any conveyance of title to a portion of the Property or division or subdivision of title to the Property, whether by physical or legal process, shall be prohibited without the prior written approval of the Conservancy. Any parcels

divided or subdivided from the Property shall remain subject to all of the terms and provisions of this Easement.

- d. Commercial or Industrial Activity. No commercial or industrial uses unrelated to the Conservation Values shall be allowed on the Property.
 - e. No Fee for Use. There shall be no fee or other charge for use of the multi-purpose public recreational trail by members of the public, except for special events and programs as approved by the Landowner.
 - f. Motorized Vehicle Use. There shall be no driving or use of any motorized vehicles on the Property except those that are necessary for the uses described in paragraph 4 or 5 above or as otherwise authorized by a Landowner, provided that those uses authorized by Landowners do not significantly impair or interfere with the Conservation Values.
 - g. Chemicals. No pesticide, herbicide, fertilizer, or other chemical treatment for land, water, vegetation, or animals shall be used on the Property if the use shall violate any applicable state, local or federal law or regulation.
 - h. Dumping, Waste, Garbage, Vehicles, Equipment, and Storage. No dumping, burying, storing, applying, or releasing of waste, sewage, trash, garbage, vehicles, or appliances, or any toxic, hazardous, or offensive materials shall be allowed on the Property, except appropriate routine storage of garbage and wastes from permitted uses of the Property pending transport for proper disposal.
 - i. Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance shall be prohibited on or under the Property except for circumstances where the mineral rights were previously severed from the Property, the purpose of constructing improvements allowed under this Easement or as otherwise approved by the Landowner. Any new agreements to use the surface of the Property for mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance require the prior written approval of the Landowner.
8. **Compliance with Regulations.** Nothing in this Easement relieves any person or entity from compliance with all applicable government land use and development regulations and requirements for the particular location within the Property. Compliance with applicable government regulations is the responsibility of the Landowner or applicant for a proposed use or activity.

9. **Rights and Responsibilities of the Conservancy.** The Conservancy shall have the following rights to perpetually maintain the Conservation Values of the Property:
- a. Determination by the Conservancy. All future activities that affect the Property (other than for Water Works Purposes, which are addressed in paragraph 1.b. above, and other than for public necessity, health, or safety, which are addressed in paragraph 4.a. above), whether enumerated in this Easement or that are otherwise approved as set forth in this Easement, shall be consistent with the Purpose of this Easement and shall not significantly impair or interfere with the preservation and protection of the Conservation Values. When the Conservancy reviews a potential use of the Property, the Conservancy is making a determination whether the potential use of the Property is consistent with the Purpose of this Easement and whether it significantly impairs or interferes with the preservation and protection of the Conservation Values. In addition, commercially reasonable efforts shall be made by those entities undertaking such activities to minimize impact to the Conservation Values, including restoring the affected Property to its pre-existing condition as much as reasonable. Any Party or other entity that proposes to undertake any activity that may materially adversely affect the Conservation Values, including those enumerated in paragraph 5, shall provide advance written notice of such proposed activity in sufficient detail that describes the proposed activity within a reasonable time to the Conservancy, except in the case of emergencies.
 - b. Right to Enforce. The Conservancy has the right to enforce compliance with this Easement.
 - c. Right to Enter. The Conservancy has the right to enter the Property to monitor or to enforce compliance with this Easement.
 - d. Right to Preserve. The Conservancy has the right to prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement or that significantly impairs or interferes with the preservation and protection of the Conservation Values.
 - e. Right to Require Restoration. The Conservancy has the right to require commercially reasonable restoration of the areas or features of the Property which are damaged by uses permitted under this Easement and by activity inconsistent with or in violation of this Easement.
10. **Acts Beyond Party's Control.** The Conservancy may not bring an action against a Party claiming violation of this Easement for modifications to the

Property resulting from causes beyond a Party's control. Examples include: fires, storms, natural earth movement, or well-intentioned actions in response to an emergency resulting in changes to the Property. Parties have no responsibility under this Easement for such modifications. Notwithstanding the foregoing, Landowners shall not knowingly allow third parties to perform any act on or affecting the Property that, in the respective Landowner's opinion, significantly impairs or interferes with the preservation and protection of the Conservation Values or the express terms of this Easement. Except as may be set forth in any agreement between a Landowner and the Conservancy, between a Landowner and another government entity, or between the Conservancy and a third-party contractor, Landowners shall continue to be solely responsible for and the Conservancy shall have no obligation for the upkeep and maintenance of the Property, and Landowners understand that nothing in this Easement relieves Landowners of any obligation or restriction on the use of the Property imposed by law.

11. **Enforcement.** The Conservancy may enforce this Easement at law or in equity, including, without limitation, pursuant to the provisions of C.R.S. §§ 38-30.5-101, *et seq.* If there is a violation, or threatened violation, of this Easement, the Conservancy shall notify GOCO and the person or entity in violation or threatening the violation, who shall, in the case of an existing violation, promptly cure the violation by: (a) ceasing the same and (b) restoring the Property to the condition before such violation, or in the case of a threatened violation, refrain from the activity that would result in the violation.
 - a. The Conservancy's remedies described in this Easement shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Such remedies include the right to recover any damages for violation of the terms of this Easement or injury to the Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or ecological values and to require restoration of the Property to the condition that existed prior to any such injury.
 - b. Any individual, entity, or Party violating this Easement shall reimburse the Conservancy for all reasonable expenses incurred by the Conservancy in enforcing the terms of this Easement, including, without limitation, costs and expenses of suit, expert witness fees, staff time, and reasonable attorneys' fees, and any costs of restoration necessary to cure the violation. If the court determines that the Conservancy had no basis for seeking to enforce the terms of this Easement against such individual, entity, or Party, the Conservancy shall pay the costs and expenses of suit, including reasonable attorneys' fees, incurred by such individual, entity, or Party.

- c. The existence of the Present Conditions Report does not preclude the use of other information that is relevant to the determination of whether there is a violation of this Easement.
- 12. **Waiver.** Failure to enforce any restriction or covenant herein contained shall in no event be deemed a waiver of a right to do so thereafter as to the same violation or breach or as to one occurring prior or subsequent thereto.
- 13. **Property Conveyance, Lease, Transfer, or Correction.**
 - a. Any conveyance of all or any portion of the Property to any person or entity other than the counties in which any portion of the Property is located, or to any state or federal agency that has a purpose or mission that is compatible with preservation and protection of the Conservation Values, is prohibited, absent the express written consent of all the Parties. A Party shall give the other Parties notice of any subsequent conveyance, including, without limitation, transfer or lease of all or any portion of the Property, and any deed or other instrument evidencing or effecting such conveyance shall contain language substantially as follows: "This [conveyance/lease/easement] is subject to a Conservation Easement which runs with the land and which was granted to the High Line Canal Conservancy by instrument dated [DATE] and recorded in the office of the Clerk of [COUNTY] County." The failure to include such language in any deed or instrument shall not affect the validity of this Easement or its applicability to such Property.
 - b. The Parties agree to cooperate to correct mutually acknowledged errors in Exhibits A and B, including typographical, spelling, or clerical errors and conveyances outside the intended High Line Canal corridor. The Parties shall make such corrections by written agreement, which shall be recorded in the records of the Clerk and Recorder of the county or counties in which the affected Property is located.
 - c. The Parties acknowledge that Denver Water's intention in development of the Property legal description contained in Exhibits A and B starts with an approximately 100-year-old legal description with several inclusions and exclusions over the years. Denver Water's intent for this Easement was to include property interests that are generally 100-200 feet in width along the present-day High Line Canal corridor. The Parties shall cooperate to correct mutually acknowledged errors in Exhibits A and B that are outside the present-day High Line Canal corridor. In the event Denver Water has transferred ownership of some or all of the Property that includes parcels or portions that are outside the present-day High Line Canal corridor, Denver Water agrees that the entity receiving

such parcels or portions may quitclaim those property interests back to Denver Water. Notwithstanding the requirements of C.R.S. §§ 38-30.5-101, *et seq.*, and any provisions in this Easement to the contrary, the Parties agree that such parcels or portions outside the present-day High Line Canal corridor shall be excluded from the Property and this Easement. Any corrections shall be recorded in the records of the Clerk and Recorder of the county or counties in which the affected property interest is located.

14. **Liabilities.** To the extent allowed by law, each Landowner, the Conservancy, and Denver Water shall be responsible for any claims and lawsuits brought against it arising from its actions and omissions on the Property. In the event a claim is made or a lawsuit is brought against the Conservancy for an act or omission made by a Landowner, to the extent allowed by law the Landowner that made the act or omission shall defend the Conservancy against and shall pay any judgment related to such claim. To the extent that title to the Property is divided, the liabilities of a Landowner under this paragraph shall be limited to that portion of the Property owned by such Landowner. Denver Water's responsibilities under this paragraph shall survive its conveyance of the Property and shall remain in effect for as long as Denver Water uses the Property for Water Works Purposes. Nothing in this Easement or in any actions taken by the Parties or Denver Water or their respective elected officials, directors, officers, agents, and employees pursuant to this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

15. **Assignment.**

- a. The Conservancy may not assign this Easement or any right or liability of this Easement without the express written consent of the Landowners and of Denver Water (as long as Denver Water has not vacated its Water Works Purposes).
- b. If the Conservancy shall cease to exist, then Landowners, Denver Water (as long as Denver Water has not vacated its Water Works Purposes), and GOCO shall require the Conservancy to assign its obligations under this Easement to a non-profit corporation or government entity they have approved in writing that (i) is not a Landowner nor Denver Water; (ii) has a mission that is compatible with enforcing the restrictions of this Easement; and (iii) agrees in writing to assume the obligations of the Conservancy under this Easement.
- c. If the Conservancy is not substantially performing its obligations under this Easement, then Landowners and Denver Water (as long as Denver Water has not vacated its Water Works Purposes) shall

notify the Conservancy in writing of the performance concern and provide the Conservancy with a reasonable period of time to correct the issue. If the Conservancy does not correct its performance within the required period, then Landowners and Denver Water (as long as Denver Water has not vacated its Water Works Purposes) may require the Conservancy to assign its obligations under this Easement pursuant to the requirements of paragraph 15.b. above.

- d. Should the Conservancy be unable to assign its interest in this Easement pursuant to paragraph 15.b. or 15.c. above, or if the required approvers in paragraphs 15a, 15.b. or 15.c. cannot agree to an assignee, a court with competent jurisdiction shall appoint an appropriate assignee of the Conservancy to undertake the Conservancy's obligations under this Easement.

- 16. **Severability.** If any portion of this Easement is determined to be invalid, the remaining provisions will remain in force and shall be liberally construed to effectuate the Purpose.
- 17. **Notices.** Any notice, demand, request, consent, approval, or communication that any Party desires or is required to give to the other shall be in writing and served personally, or sent by certified mail, postage prepaid, return receipt requested, or by e-mail with proof of receipt and addressed as follows:

To Landowner:

CEO/Manager
Denver Water
1600 W. 12th Ave.
Denver, CO 80204
e-mail _____

With a Copy To:

General Counsel
Denver Water
1600 W 12th Ave.
Denver, CO 80204
legaldepartment@denverwater.org

To the Conservancy:

High Line Canal Conservancy
4010 E. Orchard Road
Centennial, CO 80121
e-mail _____

To GOCO:

Executive Director
State Board of the Great Outdoors
Colorado Trust Fund
1900 Grant St., Suite 725
Denver, CO 80203
Email: _____

After transfer of Property by Denver Water:

To Arapahoe County:
Open Spaces
Arapahoe County Lima Plaza
6934 S. Lima Street, Suite A
Centennial, CO 80112
open_space@arapahoegov.com

With copy to:
County Attorney
Arapahoe County Administration Building
5334 S. Prince Street
Littleton, CO 80120
attorney@arapahoegov.com

or to such other address as any of the Parties or GOCO shall designate from time to time by written notice to the others. Notice shall be effective upon receipt.

18. **Recordation.** This Easement shall be recorded in the records of the Clerk and Recorder of each county in which the Property is situated.
19. **Dispute Resolution.**
 - a. If a dispute relating to this Easement arises among any of the Parties, the affected Parties shall first consider any proposed resolution of the matter. If the matter is not resolved, the affected Parties shall promptly convene a meeting to be attended by persons with decision-making authority regarding the subject matter of the dispute. The meeting attendees shall attempt in good faith to negotiate a resolution of the dispute. Each Party shall pay its own costs and expenses, including attorney fees, of efforts at dispute resolution under this paragraph.
 - b. If a dispute is not resolved within 90 days, or another agreed-upon time period, after the meeting required under paragraph 19.a., the affected Parties shall be free to pursue any other legal remedy. In the event of legal proceedings, the affected Parties agree to seek a prompt resolution.
 - c. Nothing in this section 19 shall prevent the Conservancy from taking immediate legal action if there is imminent harm, or the threat of imminent harm, to the Conservation Values.
20. **Governing Law.** This Easement shall be governed by and construed under the laws of the State of Colorado.

21. **Venue.** This Easement shall be deemed performable in each county in which the Property is situated, notwithstanding that the Parties may find it necessary to take some action outside their respective county. Until conveyance of the Property by Denver Water, the sole venue for any dispute resulting in litigation shall be in the District Court in and for the City and County of Denver. Following conveyance of the Property by Denver Water, the venue for any dispute resulting in litigation shall be the county in which the respective portion of the Property is situated; if a dispute involves more than one county, the Parties shall agree to the appropriate venue.
22. **No Third-Party Beneficiaries.** There shall be no direct or indirect third-party beneficiaries of this Easement, other than GOCO, and no Party shall be liable to any third party for any default or breach of this Easement. Although one of the purposes of this Easement is to maintain public access to the multi-purpose recreational trail located in the Property, there is no right of the public established in this Easement to such public access, and only the Conservancy has the right to enforce the public access and other provisions of this Easement. Members of the public have no right to enforce the provisions of this Easement.
23. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Denver Water's title to the Property in any respect.
24. **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation. The Recitals set forth at the beginning of this Easement are part of this Easement and are incorporated herein by this reference.
25. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, this Easement may be amended. The Parties agree the Easement may be amended to encumber additional High Line Canal property that was retained by Denver Water at the time of this Easement but conveyed to another Landowner at a later date. Amendments shall not affect the perpetual duration of this Easement. Any amendment must be in writing, signed by all Parties (including Denver Water so long as Denver Water has not vacated its Water Works Purposes) and recorded in the records of the Clerk and Recorder of the counties in which the Property is located. A copy of the recorded amendment shall be provided to GOCO.
26. **Termination and Extinguishment.** If circumstances arise in the future such as to render any of the Conservation Values impossible to fulfill, this Easement may be terminated and extinguished pursuant to the terms of this paragraph, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction. Before ordering this Easement terminated, the court must first determine that it is impossible to accomplish any of the Conservation Values. Each Party shall promptly notify the other when it first learns of such circumstances. If this Easement is terminated and extinguished in part, it shall

remain valid as to the portion deemed not to be terminated and extinguished. In the event of condemnation or involuntary conversion of all or any portion of the Property, or sale or exchange of all or any portion of the Property subsequent to such termination and extinguishment, the Conservancy shall be paid one-half (1/2) of the amount of the proceeds. The remaining one-half (1/2) of the proceeds shall be paid to the Landowners of the affected Property; in the case of multiple Landowners, the remaining one-half (1/2) of the proceeds shall be divided among the Landowners in proportion to the amounts of the Property they own. The Conservancy shall reinvest its net proceeds, after payment of its costs and expenses of termination or condemnation, including attorneys' fees, into the Property in a manner agreed to by the Landowner(s) of the terminated or condemned portion(s) of the Property.

27. **Review Fees.** The Parties have the right to be reimbursed for reasonable expenses incurred in reviewing requests for approval as provided for under the terms of this Easement, including, but not limited to, staff time, consultant fees and expenses, and reasonable attorneys' fees, except that Landowners shall not be required to reimburse such expenses. Such reimbursement shall be the responsibility of the non-Landowner party requesting review.
28. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to effectuate the Purpose. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.
29. **No Merger.** Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Easement. A merger of this Easement and the fee title to the Property cannot occur by operation of law because, in addition to the Conservancy's rights and interest under this Easement, GOCO has rights under this Easement. Under Colorado law, the existence of these rights precludes unity of title. If the Conservancy wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold), the Conservancy must first obtain the written approval of Denver Water (so long as Denver Water has not vacated its Water Works Purposes), Landowners, and GOCO. As a condition of such approval, Denver Water (so long as it has not vacated its Water Works Purposes), Landowners, and GOCO may require that the Conservancy first transfer the Easement to another qualified organization consistent with paragraph 15 above.
30. **Perpetual Duration.** The Easement shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Denver Water or the Conservancy shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Any legal entity that owns a portion of the Property from time to time is included within the definitions of Party and Landowners for the purposes of this Easement.

A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in this Easement or the Property as to such interest transferred, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

31. **Termination of GOCO.** In the event that Article XXVII of the Colorado Constitution, which established GOCO, is amended or repealed to terminate GOCO or merge GOCO into another entity, the rights and obligations of GOCO under this Easement shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.
32. **Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are incorporated herein. In the event of any conflict between the terms and provisions of this Easement and the terms and provisions of the Conservation Easement Stewardship Procedures, the terms and provisions of this Easement shall govern and control in every instance.

TO HAVE AND TO HOLD, this Easement unto the Conservancy, its successors and assigns, forever.

IN WITNESS WHEREOF, Denver Water and the Conservancy, intending to legally bind themselves, have set their hands on the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGES FOLLOW]

